IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

Crl.MC.No. 4121 of 2005()

CC.245/2005 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD

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PETITIONER:

C.REGHUNATH, S/O.E.K.KRISHNAN,
"RADHA NIAVAS", MANGAVU, CALICUT.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SHOUKATH ALI, S/O.HAMZA,
KAIPPANGADI, THATHAMANGALAM, MANNARKKADU,
PALAKKAD.

BY PUBLIC PROSECUTOR: SRI.AKBAR K.A
SRI.JACOB SEBASTIAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C No. 4121 OF 2005

Dated this the 11th day of December 2006

ORDER

The petitioner is a Forest Range Officer . He is made an accused in a prosecution for offences punishable interalia under Sections 342 and 384 of the I.P.C. That prosecution is initiated by the second respondent/complainant.

2. Respodnent/complaiant is the second accused in a Crime registered wherein the precise allegation is that the second respondent/complainant had supplied a forest produce- (sandal oil) to the co-accused from whose possession it was recovered by the police on receipt of prior discreet information. The co-accused was produced before the learned Magistrate. The complainant was handed over to the forest official. The confession statement was allegedly recorded. He was later produced before the Magistrate having jurisdiction. He did not raise any complaint against the forest officials when he was produced before the learned Magistrate. Later in the application for bail filed by him also no allegations specifically were raised against the forest officials. But later a complaint was filed showing the petitioner herein as the accused before the learned Magistrate . On that complaint the learned Magistrate has taken

cognizance . The petitioner has come to this Court to quash the said complaint invoking the powers available of this Court under Section 482 of the Cr.P.C

3. What are the grounds? First of all the learned counsel for the petitioner contends that the allegations are totally false. That dispute - as to whether the allegation are true or false, cannot obviously be attempted to resolve by this Court with the materials presently available,by invoking the powers under Section 482 of the Cr.P.C .

4. Be that as it may, the next contention raised is that at any rate no prosecution can lie against the petitioner in view of the immunity provided under Section 74 of the Kerala Forest Act.Section 74 of the Kerala Forest Act read as follows:-

> ***Indemnity for acts done in good faith :-*** *No suit or criminal prosecution or other proceeding shall lie against any public servant for any act done or omitted or ordered to be done , in good faith, in pursuance of this Act.*

5. In the light of the specific stipulations of Section 74 want of good faith is a condition precedent to attract any criminal prosecution

against the petitioner, admittedly a public servant/ Forest Range Officer of the Forest Department. The learned counsel for the petitioner submits that even if the entire allegations of the complainant were to be accepted as gospel truth there is not even a whisper of an allegation that the petitioner had no good faith when action was initiated. In this context I have been taken through the averments in the complaint in detail

6. The averments in the complaint show that the first accused was arrested by the police. He furnished information to the police about the second accused i.e the complainant herein. The first accused, evidently at the instance of the police, called the complainant the second accused. He reached there. The police took him to the police station. The first accused was produced before the Magistrate. But the petitioner/ complainant was kept at the police station. He was handed over to the custody of the Forest officials. The forest officials allegedly questioned him . They allegedly got him to write and sign in four papers. Later, on 21-11- 2005 in the presence of the Petitioner/ Forest Range Officer those matters which were got written by him were transcribed by a Forest Guard and in such paper the signature of the petitioner was obtained by compulsion/ insistence ( ) . Thereafter the complainant was produced before the

learned Magistrate in O.R 7/2005 a case registered by the Forest Officials in respect of that crime.

7.. Pertinently and significantly there is not a whisper of an allegation in the complaint that the petitioner did not have good faith in performing the acts which he allegedly did. That he was acting in his capacity as a Forest Range Officer is not disputed. There is no allegation of any want of good faith. Even going by the averments in the complaint a statement in four pages was written in the hand of the complainant and his signatures were obtained in those four papers. There is no allegation that the petitioner was present then. It was thereafter that the contents of that statement were extracted by a Forest Guard in a different paper in which the signatures of the complainant were obtained. The only allegations against the petitioner in the complaint is that such re-writing of the statement in the hand of the Forest Guard was made in the presence of the petitioner .

8. In the light of the mandate Section 74 a Criminal prosecution cannot lie against the petitioner unless there is specific allegation of malafides- want of good faith. Significantly there is no such allegation in

the complaint (Copy of which is produced as Annexure-8) .In these circumstances it is evident that continuation of further prosecution would certainly be against the specific stipulations of Section 74. In the peculiar circumstances of the case I am certainly persuaded to agree that this is a fit case where the prosecution against the petitioner/ Forest Range Officer deserves to be quashed by invoking the extraordinary inherent jurisdiction under Section 482 of the Cr.P.C. The petitioner even going by the entire averments in the complaint was only performing his official duty in permitting the re-writing of the statement in the handwriting and signature of the petitioner by a Forest Guard and in obtaining the signature of the petitioner in such statement written by the Forest Guard . There is nothing alleged to show that the petitioner was acting without the requisite good faith.

9. In the result This Crl.M.C. is allowed C.C. 245/2005 against the petitioner pending before the C.J.M. Palakkad is quashed.

R.BASNAT, JUDGE

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